

JEFFERSON COUNTY COMMISSIONERS
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TOM LYTHGOE, CHAIR

CHUCK NOTBOHM

KEN WEBER

**PROCEEDING OF THE BOARD OF COMMISSIONERS
COUNTY OF JEFFERSON, STATE OF MONTANA
January 10, 2006**

Present: Commissioners Lythgoe, Notbohm and Weber; Chuck Haye, Bill Johnson, Terry Reed, Lyle Reed, Dan Bushilla, Gordon Ford, Richard Parks, Charles Steffes, Bob Casagrande, Bud Smith, Jim Alley, Bill Woods, Ed Schwab, Steven Dangel, Joe Davis

MINUTES

Commissioner Lythgoe moved to accept the minutes of December 13, 2005. Commissioner Weber seconded. The motion carried.

CALENDAR REVIEW

- 1/11 CTAC - Whitehall - 8:00
Gold West Country - Butte - 11:00
Rotary - Helena - noon
Whitehall skate park meeting - Whitehall - 7:00
- 1/12 Tri-Co Fire - 9:00
Area IV on Aging - Three Forks - 10:00
Library Board - 6:30
- 1/13 Elkhorn Working Group - 3:00
- 1/16 Holiday - County offices closed
- 1/17 Fire Council - Boulder - 6:30
Public meeting re: Montana City interchange - Montana City - 7:00

COMMISSION REPORTS

E-9-1-1

Commissioner Lythgoe reported that he attended an E-9-1-1 meeting on Tuesday night. He stated that it was a very short meeting. Officers were elected.

MEETING WITH MDT

Commissioner Lythgoe stated that the Commissioners met with MDT on Wednesday regarding Robbins Lane. John Blacker, maintenance person in the area will look into the cost of bringing

the road up to standards for milling. Commissioner Weber reported that he spoke to Glenn Marx of the *Whitehall Ledger* regarding the meeting.

MONTANA CITY ROUNDABOUT

Commissioner Lythgoe reported that the Commission met with Stahly Engineering on Wednesday morning regarding the landscaping of the roundabout at the Montana City intersection.

DEPARTMENT HEAD/ELECTED OFFICIAL MEETING

Commissioner Lythgoe reported that a department head meeting was held the previous Thursday. He stated that it was a good meeting. The next meeting is scheduled for February 9th, and Gary Habutzel will be coming to talk about insurance.

DEQ MEETING REGARDING CHANGE IN ADMINISTRATIVE RULE

Commissioner Lythgoe reported that the Commissioners attended a meeting that morning regarding a proposed change to the administrative rule as it pertains to mining. Commissioner Lythgoe stated that there was only one proponent of the change in attendance.

SOLID WASTE SALVAGE ISSUE

Commissioner Weber reported that he met with Pat Crawley of the DEQ the previous Friday to discuss the Solid Waste salvage issue. Commissioner Lythgoe asked if he got any indication of how DEQ will rule on this. Commissioner Weber stated that the County will need to control salvage. Site attendants could put items from the metal pile into the up-for-grabs, for example.

ITEMS FOR COMMISSIONERS ACTION OR REVIEW

BILL JOHNSON - DISCUSS SOLID WASTE SALVAGE ISSUE

Commissioner Lythgoe stated that he is very familiar with this issue, but not as familiar as Commissioner Weber, and turned the meeting over to him. Commissioner Weber stated that some at this meeting were in attendance at the November Solid Waste meeting. At that time, the Solid Waste Board moved to continue with their no salvage ruling, but to contact the DEQ for operating permits for the up-for-grabs pile and salvage for the metal piles in Boulder and Whitehall. He stated that Ben Sautter, Solid Waste supervisor, received a letter from the DEQ today. He read a portion of the letter (attached) that pertained to the salvage and up-for-grabs pile. Both of these are expressly prohibited, unless the owner can guarantee safety. He stated that where they are currently, is attempting to get a permit for the up-for-grabs. Commissioner Lythgoe stated that he thought the request had already been made, but from the letter, it sounds like it hasn't. Commissioner Weber stated that they have contacted DEQ about the best way to fill out the permit request, so that they have the best possibility of getting approved.

Bill Johnson stated that he has been a Solid Waste employee for two years. During that time, droves of people have approached him to express their appreciation for access to the salvage. He wanted to see, by putting out a petition, how many people are in support of salvaging. He stated that he thinks there are about 1000 names on the petitions. He stated that the reason behind closing the metal pile to salvage at first was money; after that it was liability; then a law that is

not actually a law. Commissioner Weber stated that it is an Administrative Rule of Montana, ARM, which is based on statute. Bill stated that this rule is for dumpsters only. Commissioner Weber stated that it actually is not for container sites, but for landfills, such as Boulder and Whitehall, which are Class 3 sites.

Commissioner Weber stated that personally, he enjoyed salvaging from the pile. However, they have never been permitted for salvage. Bill stated that they don't need to be; there have been no accidents, so they are proven safe. Commissioner Weber stated that Jefferson County could lose their permit. He noted that the portion of the rule that is in the letter is not the entire rule. He equated this to speed limits. If Montana decided to do away with a set speed limit again, we would lose our Federal highway funds. Commissioner Weber stated that the person he has been speaking with at DEQ would be happy to come to a Solid Waste meeting to discuss this. Bill noted that the County turned itself in.

Commissioner Lythgoe stated that whether we turned ourselves in or not, we were not in compliance, and would have been found out at some time. He is surprised that this wasn't discovered sooner. The Solid Waste board needs to go through the steps to try to be permitted. He noted that he grew up on a farm, and they salvaged. He doesn't want to close this, but the Commission can't over-rule what the DEQ has set as a rule. Bill noted that it is only a rule, not a law. Commissioner Weber stated that at the meeting with the DEQ that morning, it was stated that they have the authority per the legislature to make rules that need to be abided by. This has been a lengthy process. Liability is an issue. Keeping costs down benefits everyone, as well the money the County can make by taking salvage. The DEQ saw the discussions in the paper regarding the salvage issue, and told the Solid Waste board that salvage is not allowed. Bill asked for clarification as to whether this is a rule or a law. Commissioner Lythgoe stated that an ARM is the same as a law. Even though the legislature didn't approve it as statute, it still has the same status as law.

Terry Reed stated that there have been a lot of people who have voiced their concern, and they have heard from two Commissioners today that they would like to have the salvage, and asked what the Commission is doing to try to get this overturned. Commissioner Weber stated that they are working to get salvage permitted.

Ed Schwab asked if all of the signatures on the petition mean anything. Commissioner Lythgoe stated that of course they do, but as a Commission, they do not have any authority in this. The authority is with the DEQ, because they permit the dump. These are state rules, and the Commission has no control. What they can do is to continue with the permit process. He stated that they can submit the petitions with the permit application. Ed stated that he is going to continue to apply pressure. Commissioner Weber stated that they are trying to get the permit written properly, that will allow what the public wants and what the DEQ requires. He met with DEQ on Friday to see how best to submit a successful permit application. Ed stated that he feels that there is even more support out there than is reflected in the petitions.

Commissioner Lythgoe stated that, as a Commissioner, he can understand some of the DEQ's concerns. There have been accidents at the dump sites, so he can understand the insurance carrier's concerns regarding this also. He also understands the public's position. They are doing

all that they can to get salvage permitted. Ed stated that he can't understand the liability issue; if someone falls into a container, it's their own fault. Commissioner Lythgoe stated that the County is liable, and is, in fact, currently being sued by someone who fell into a dumpster. Terry stated that some people will sue no matter what, and will sue if it is their fault or not. Commissioner Lythgoe stated that this is true, but it is still not the County's call regarding what is permitted.

Dan Bushilla asked if it would help to have people call and talk to Pat Crowley, and let him know that this is what the people want. Commissioner Weber stated that it couldn't hurt. He stated that this is going to play out more in the Solid Waste board meetings. He understands that it is hard to make an afternoon meeting, but it is a Solid Waste decision, and it will be played out in those meetings.

Someone stated that all the Commissioners are on the public's side, and asked if there is anything else to do. Commissioner Lythgoe stated that when he says he is on their side, they need to understand that he also understands the position of the DEQ and insurance. He noted that the Commission doesn't even have any authority over the Solid Waste board; this is their decision. Joe Davis asked for clarification that the elected officials don't have authority over an appointed board. Commissioner Lythgoe stated that the Solid Waste Board is an enterprise fund, and the Commission has very limited authority over them, per statute. Commissioner Weber stated that the biggest control over the Solid Waste Board is with union contracts, as the employees are county employees. He noted that the Solid Waste Board did move to pursue the permit. If the DEQ hadn't become involved, this would have been taken care of by now. Bill Johnson stated that all he knows is that there is nothing environmentally wrong with picking up a piece of metal.

PUBLIC HEARING - PETITION TO CLOSE OLD VIRGINIA CITY ROAD IN MONTANA CITY AREA

Commissioner Lythgoe called the public hearing to order. He stated that he and Ben Sautter, Road Supervisor, viewed the road in question. 4-wheelers are using the road, and it is not a safe situation for 4-wheelers to come out on Highway 282. They both feel strongly that the request is legitimate. In the past there had been discussion between Pam Bompert and Dave Rasmussen, but both are in agreement with the petition at this time. This makes the abandonment much more palatable. Commissioner Weber asked who owns the old rail bed. Commissioner Lythgoe stated that he thinks it belongs to Dave Rasmussen. Commissioner Weber asked if there are any access issues involved. Commissioner Lythgoe stated that there aren't; there really isn't anything there. You can't even take a pickup down the entire length.

Hearing no further comment, Commissioner Lythgoe closed the public hearing.

RESOLUTION 03-2006 ORDER TO ABANDON ROAD

Commissioner Lythgoe read the resolution as follows:

RESOLUTION 03-2006

AN ORDER ABANDONING A COUNTY ROAD

A petition was filed with the Board of County Commissioners of Jefferson County, Montana (hereinafter, the "Board"), by Robert M. Sloan; Dale Fleck; Robert & Eloise Tyler; Wayne & Yvonne Babcock; the June E. Eyer Trust; Lorna Dodge & M.J. Collett; Marilyn J. Monroe; Wayne & Elaine Williams; Gordon & Emily Nielsen; Beverly J., Bradley Thomas, Scot Steven, Douglas Alan, & Rebecca Ann Schmidt; Lloyd G. & Carol J. Fader; Jerry W. & Patricia A. Haas; Harold & Carole Herron Family Trust; Glen T. & Marianna McCracken; Dawn Baker & Donald H. Smith; JoAnn Hattersley; William H. Stinchfield & Myrna H. Schultz; Douglas E. Nulle Trust; Joanne M. & Edward P. Canty; Peter A. & Kathleen F. Ruscitto; Karen Strickler; Donah M. Bower; Lawrence R. Worden; James Terry McLean; Tetzloff Family Living Trust; and Frontier Builders on the 13th day of December. This petition requested the abandonment of a certain Jefferson County road in the Montana City area. The description of the subject County road is set forth as follows:

That portion of Tract 1 lying to the west of Tract 2 as both tracts are depicted in Certificate of Survey No. 174273, Folio 468D, located in the NE ¼ of Section 23, Township 9 North, Range 3 West, P.M.M, according to the records and plats on file in the Office of the Clerk and Recorder of Jefferson County, Montana.

The section of the road to be abandoned lies to the west of Prickly Pear Creek and between the right-of-way for Highway 282 and Stoney Brook Drive (the private access road for the condominium development).

Pursuant to Title 7, Chapter 14, Part 26, MCA, the Board made a preliminary review of the subject Petition. The Board found that the petition was submitted by a majority of the landowners affected by the street petitioned to be closed within Jefferson County and found that said petition described the particular street or portions thereof to be abandoned, the general route thereof, and the lands and owners affected by the proposed abandonment.

The Board further determined that the consent of the owners of the affected lands was endorsed upon the Petition by their execution of the same and that the Petition set forth the necessity for an advantage of the petitioned action.

Therefore, the Board ordered that the feasibility, desirability, and cost of granting the prayer of the Petition, and the merits or demerits of the proposed abandonment be investigated. In this regard, the Board appointed Commissioner Lythgoe and Ben Sautter, Road Supervisor, to

conduct the investigation. On January 10, 2006, Commissioner Lythgoe and Ben Sautter reported that they investigated the merits of the petition and recommended that the petition be granted.

The Board considered the Petition and the findings of Commissioner Lythgoe's and Ben Sautter's investigation. Commissioner Lythgoe moved to approve the closure of said road, hereinafter described:

That portion of Tract 1 lying to the west of Tract 2 as both tracts are depicted in Certificate of Survey No. 174273, Folio 468D, located in the NE ¼ of Section 23, Township 9 North, Range 3 West, P.M.M, according to the records and plats on file in the Office of the Clerk and Recorder of Jefferson County, Montana.

The section of the road to be abandoned lies to the west of Prickly Pear Creek and between the right-of-way for Highway 282 and Stoney Brook Drive (the private access road for the condominium development).

The Board found that the granting of the relief sought in the Petition was in the best interest of the County, was both feasible and desirable for the use and benefit of the public, would not cause any increase in costs to the public, and could be done without detriment to the public interest.

Upon such basis, the Board determined that the Petition should be granted and that an appropriate Order should be entered.

Therefore **IT IS HEREBY ORDERED** as follows:

1. That the Petition of Robert M. Sloan; Dale Fleck; Robert & Eloise Tyler; Wayne & Yvonne Babcock; the June E. Eyer Trust; Lorna Dodge & M.J. Collett; Marilyn J. Monroe; Wayne & Elaine Williams; Gordon & Emily Nielsen; Beverly J., Bradley Thomas, Scot Steven, Douglas Alan, & Rebecca Ann Schmidt; Lloyd G. & Carol J. Fader; Jerry W. & Patricia A. Haas; Harold & Carole Herron Family Trust; Glen T. & Marianna McCracken; Dawn Baker & Donald H. Smith; JoAnn Hattersley; William H. Stinchfield & Myrna H. Schultz; Douglas E. Nulle Trust; Joanne M. & Edward P. Canty; Peter A. & Kathleen F. Ruscitto; Karen Strickler; Donah M. Bower; Lawrence R. Worden; James Terry McLean; Tetzloff Family Living Trust; and Frontier Builders is hereby granted subject to the following conditions:

a) that the Petitioners recognize that no owner shall ever claim or attempt to claim that any portion of said road constitutes a "lot" or "parcel", distinct from the owners adjoining lot

or property, upon which the separate residence or structure requiring water and sewer facilities can be constructed, and;

b) that any utility easements now existing on the right-of-way will be continued unaltered and that access by utility company employees for the maintenance of the equipment shall be allowed, and;

c) that Jefferson County shall retain full utility right, if any.

2. That the portion of the said Jefferson County road which is abandoned by this Order is more particularly described as:

That portion of Tract 1 lying to the west of Tract 2 as both tracts are depicted in Certificate of Survey No. 174273, Folio 468D, located in the NE ¼ of Section 23, Township 9 North, Range 3 West, P.M.M, according to the records and plats on file in the Office of the Clerk and Recorder of Jefferson County, Montana.

The section of the road to be abandoned lies to the west of Prickly Pear Creek and between the right-of-way for Highway 282 and Stoney Brook Drive (the private access road for the condominium development).

DATED this 10th day of January, 2006.

ATTEST:

BONNIE RAMEY
CLERK AND RECORDER

TOMAS E. LYTHGOE, CHAIR

CHUCK NOTBOHM, COMMISSIONER

KEN WEBER, COMMISSIONER

Commissioner Weber moved to adopt the resolution. Commissioner Notbohm seconded. The motion carried.

RESOLUTION 1-2006 SETTING MEETING DAY FOR THE BOARD OF COMMISSIONERS

Commissioner Lythgoe read the resolution as follows:

RESOLUTION 01-2006

SETTING MEETING DAY FOR BOARD OF COUNTY COMMISSIONERS

WHEREAS, the governing body of the County will, by resolution, establish a regular meeting date and notify the public of that day; and

WHEREAS, the governing body of the County, except as may be otherwise required of them, may meet at any time for the purpose of attending to County business; and

WHEREAS, the Board of County Commissioners of Jefferson County, Montana has determined that every Tuesday at 1:30 p.m. is the best time for their regular meeting for the purpose of conducting it's official business, and

WHEREAS, it was further determined that claims would be approved every Tuesday morning at 10:00 a.m. and that the Commission will meet with the Road/Solid Waste Supervisor for departmental updates at that time also.

NOW, THEREFORE, BE IT RESOLVED, that every Tuesday at 1:30 p.m. of each week will be the regular meeting date and time, effective the 10th day of January 2006, and that every Tuesday at 10:00 a.m. of each week will be the time set for claims approval and Road/Solid Waste updates. Roberts Rules of Order shall be adhered to at these meetings, and professional speech will be used by the Commission in talking with and about each other, employees, board and the general public, and that there will be no claim of criminal activity by anyone, unless they have been convicted of said criminal activity.

BE IT FURTHER RESOLVED, that the policy providing for public participation in public meetings as stated in Resolution 05-2004 will be continued.

DATED this 10th day of January, 2006.

ATTEST:

BONNIE RAMEY
CLERK AND RECORDER

TOMAS E. LYTHGOE, COMMISSIONER

CHUCK NOTBOHM, COMMISSIONER

KEN WEBER, COMMISSIONER

Commissioner Notbohm moved to adopt the resolution. Commissioner Weber seconded. The motion carried.

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RESOLUTION 02-2006 DESIGNATING CLASS OF COUNTY

Commissioner Lythgoe read the resolution as follows:

RESOLUTION 02-2006

DESIGNATING CLASS OF COUNTY

WHEREAS, § 7-1-2112, MCA, states that the Board of County Commissioners must yearly make an order designating the class to which the county belongs, as determined by the taxable valuation; and

WHEREAS, § 7-1-2111 (c), MCA, states that all counties having a taxable valuation of \$20 million or more and less than \$30 million are third class counties; and

WHEREAS, the taxable valuation for Jefferson County for fiscal year 2006 is \$24,242,113;

NOW, THEREFORE, BE IT RESOLVED, that the Jefferson County Board of County Commissioners hereby designate Jefferson County as third class county.

DATED this 10th day of January, 2006.

ATTEST:

**BONNIE RAMEY
CLERK AND RECORDER**

TOMAS E. LYTHGOE, COMMISSIONER

CHUCK NOTBOHM, COMMISSIONER

KEN WEBER, COMMISSIONER

Commissioner Weber moved to adopt the resolution. Commissioner Lythgoe seconded. The motion carried.

MEETING ADJOURNED

ATTEST:

BONNIE RAMEY

TOMAS E. LYTHGOE, CHAIR

CLERK AND RECORDER

CHUCK NOTBOHM, COMMISSIONER

KEN WEBER, COMMISSIONER